



# Department of Justice

FOR IMMEDIATE RELEASE  
WEDNESDAY, DECEMBER 20, 2006  
WWW.USDOJ.GOV

CRM  
(202) 514-2008  
TDD (202) 514-1888

## **FOUR FORMER EXECUTIVES CONVICTED IN CONNECTION WITH FRAUD AT ENTERASYS NETWORKS, INC.**

WASHINGTON – A federal jury in Concord, New Hampshire has convicted four former senior executives of Enterasys Networks, Inc. on charges arising out of accounting fraud at the computer network products company formerly based in Rochester, N.H., Assistant Attorney General Alice S. Fisher and Acting U.S. Attorney Joseph N. Laplante for the District of New Hampshire announced today.

The jury returned its verdicts Tuesday afternoon after six-and-one-half days of deliberations following a five-week trial.

The jury returned guilty verdicts against the following defendants:

- Robert J. Gagalis, former Enterasys Chief Financial Officer, for one count of conspiracy, two counts of securities fraud, one count of making false statements to auditors of a public company, and four counts of wire fraud. The jury acquitted Gagalis on one count of wire fraud and one count of falsifying books and records of a public company.
- Bruce D. Kay, former Enterasys finance executive, for one count of conspiracy, two counts of securities fraud, one count of falsifying books and records of a public company, one count of making false statements to auditors of a public company, and three counts of wire fraud. The jury acquitted Kay on one count of wire fraud.
- Robert G. Barber, former Enterasys business development executive, for one count of conspiracy, two counts of securities fraud, and one count of making false statements to auditors of a public company. The jury acquitted Barber on one count of falsifying books and records of a public company.
- Hor Chong (David) Boey, former finance executive in Enterasys's Asia Pacific division, for one count of conspiracy, two counts of securities fraud, one count of falsifying books and records of a public company, one count of making false statements to auditors of a public company, and two counts of wire fraud. The jury acquitted Boey on two counts of wire fraud.

The jury was unable to reach a verdict on most counts against former Enterasys Chief Operating Officer Jerry Shanahan. The jury acquitted Shanahan of one count of causing false entries to be made to Enterasys's books and records.

The charges on which the four defendants were convicted stem from a scheme that began in the summer of 2001 to falsely inflate Enterasys's revenue to increase, or at least maintain, the price of Enterasys stock. The scheme involved the backdating and falsification of documents and

the concealment of material terms of deals in “secret side letters” all to facilitate the fraudulent recognition of revenue. The conspirators also fraudulently created false revenue by secretly investing company funds in other companies and caused those companies to use the investment proceeds to buy Enterasys products. As a result of this fraudulent scheme, Enterasys overstated its revenue by more than \$11 million in the quarter ending September 1, 2001. Enterasys’s shareholders lost approximately \$1.3 billion after the company disclosed one of the fraudulent transactions and a pending investigation by the U.S. Securities & Exchange Commission.

Gagalis and Kay are scheduled to be sentenced on March 21, 2007. Barber and Boey are scheduled to be sentenced on March 22, 2007. The defendants convicted of mail fraud, wire fraud and conspiracy offenses carry a maximum sentence of up to five years on each count. The maximum sentence for securities fraud is 10 years per count. The offenses also carry maximum fines of \$250,000 per count.

Several other former Enterasys executives, including Henry Fiallo, Enterasys’s former Chairman, Chief Executive Officer and President, previously pleaded guilty to felony charges in connection with this scheme. Their sentencings are scheduled for April 2007. Eight former Enterasys executives have now been convicted of felonies in this matter.

“Accounting schemes designed to artificially inflate a company’s revenues are doomed to fail. And as the verdicts in the Enterasys case prove, executives will be held accountable for their roles in these conspiracies,” said Assistant Attorney General Alice S. Fisher of the Criminal Division. “The Department of Justice and our partners on the President’s Corporate Fraud Task Force remain committed to protecting investors and preserving the integrity of the markets.”

Acting U.S. Attorney Joseph N. Laplante praised the verdict, stating, “The investing public deserves and needs accurate financial information about public companies. The successful prosecutions in this case should serve as a substantial deterrent to others in similar circumstances who might otherwise be inclined to ‘cook the books.’”

The case was prosecuted by Assistant U.S. Attorney Bill Morse from the U.S. Attorney’s Office in Concord, and Senior Litigation Counsel Colleen A. Conry and Special Attorney Eva M. Saketkoo from the Fraud Section of the Justice Department’s Criminal Division in Washington, D.C. The investigation was conducted by the Federal Bureau of Investigation and the U.S. Postal Inspection Service. The criminal investigation was coordinated with a civil investigation conducted by the SEC’s Central Regional Office in Denver. The case was brought under the auspices of the President’s Corporate Fraud Task Force.

###